IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

OP.No. 9940 of 2000(G)

PETITIONER:

THE EXECUTIVE DIRECTOR (S & R)
ALUMINIUM INDUSTRIES LIMITED,
SWITCHGEAR DIVISION,
MANNAR 689 622.

BY ADV. SRI.E.K.NANDAKUMAR
SRI.V.V.SURESH, ADDL.CGSC

RESPONDENTS:
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1. **SRI. G.JOY,**
   CHIEF GENERAL MANAGER,
   TECIL CHEMICALS AND HYDRO
   POWER LIMITED, CHINGAVANAM,
   KOTTAYAM DISTRICT.

2. **DISTRICT LABOUR OFFICER,**
   TRIVANDRUM
   (CONTROLLING AUTHORITY UNDER THE
   PAYMENT OF GRATUITY ACT)

3. **THE APPELLATE AUTHORITY UNDER**
   THE PAYMENT OF GRATUITY ACT, 1972
   (REGIONAL JOINT LABOUR COMMISSIONER,
   KOLLAM).

BY ADV. SRI.JOSEPH MARKOSE
SRI.MATHEWS K.UTHUPPACHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.No.16511/2000 IN O.P.NO.9940/2000

DISMISSED.

17.09.2007 Sd/- THOTTATHIL B.RADHAKRISHNAN,JUDGE

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF LETTER DT.30.3.95 BY THE IST RESPONDENT TO THE PETITIONER.

EXT.P2: COPY OF FINAL STATEMENT OF ACCOUNT OF THE FIRST RESPONDENT DT.12.8.95.

EXT.P3: COPY OF GRATUITY APPLICATION DATED 18.12.95 FILED BEFORE THE 2ND RESPONDENT.

EXT.P4: COPY OF COUNTER STATEMENT FILED BY THE PETITIONER IN G.C.10/96 BEFORE THE 2ND RESPONDENT.

EXT.P5: COPY OF ORDER OF THE 2ND RESPONDENT DT.7.6.99.

EXT.P6: COPY OF LETTER DT.3.8.99 BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P7: COPY OF APPEAL FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P8: COPY OF WRITTEN STATEMENT FILED BY THE 1ST RESPONDENT IN G.A.27/99.

EXT.P9: COPY OF ORDER IN APPEAL G.A.27/99 DT.6.1.2000.

EXT.P10: COPY OF NOTICE DT.10.2.2000 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

TRUE COPY

P.A.TO JUDGE

THOTTATHIL B.RADHAKRISHNAN,J

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O.P.No.9940 of 2000

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Dated this the 17th day of September, 2007

JUDGMENT

The petitioner company, governed by proceedings before the BIFR, challenges the orders passed by the Appellate Authority under the Payment of Gratuity Act. Apart from the contention that the petitioner is entitled to the protection of Section 22(1) of the Sick Industrial Companies (Special Provision) Act, 1985, it is contented that the recoveries which the company had made from the gratuity paid to the first respondent were on the basis of consent and therefore, the impugned decision would not stand. The Controlling Authority and the Appellate Authority have come to the conclusion that the deductions are unauthorised in as much as they exceed the authority conferred by the statute authorising recovery. But when the recovery is on the basis of written consent given by the first respondent, there is no reason why the recoveries cannot be effected. I am also not prepared to take the view that the first respondent, who was then a Senior Personnel Manager, with different qualifications ,including B.Sc., M.Com in Business

Administration, L.L.B., and PGC would have surrendered to any dictate of the management. Under such circumstances, I am of the view that Exts.P1 and P6 are binding on the first respondent and the recoveries effected by the petitioner on the basis of those consent letters would operate.

In the result, the writ petition succeeds and the impugned orders are quashed. Writ petition is allowed to that extent.

THOTTATHIL B.RADHAKRISHNAN, JUDGE

dvs